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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Asia Company Ltd.

File: B-238011

Date: December 14, 1989

DIGEST

Protest of rejection of proposal is untimely when filed more than 10 working days after basis of protest is known.

DECISION

Air Asia Company Ltd. protests the rejection of its proposal under request for proposals (RFP) No. F62562-89-R0102, issued by the Air Force for corrosion control work on C-130 aircraft. The Air Force rejected the proposal on the basis that as a Taiwanese company, Air Asia would not be able to perform the contract successfully because of the restrictive travel provisions and limitations on flight operations which apply in Taiwan.

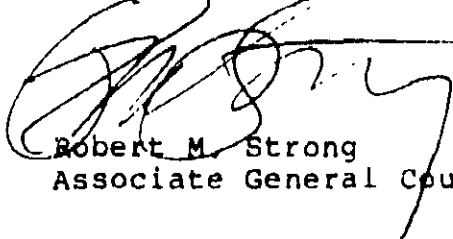
We dismiss the protest as untimely.

Our Bid Protest Regulations require that protests such as Air Asia's must be filed not later than 10 working days after the basis for protest is or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2) (1989). According to Air Asia, the Air Force sent a rejection letter to the protester by facsimile on October 16, 1989, but the protester did not receive the letter by mail until November 15. It is unclear from Air Asia's protest whether the firm never received the facsimile transmission and only became aware of its rejection after receipt of the mailed copy on November 15, or whether the facsimile copy was received when sent on October 16 and later was followed by the mailed or "hard" copy on November 15. At best, however, Air Asia by its own admission was aware that its proposal was rejected on November 15 at the latest and, accordingly, having been informed of its basis for protest, it had 10 working days from that date, or until November 30, to protest the rejection. Since Air Asia did not file its protest with our Office until well after that date, the protest is untimely. See Rudd Constr. Inc., B-234936, Apr. 10, 1989, 89-1 CPD ¶ 367.

Air Asia argues that the reason it did not file its protest with our Office earlier was that as a Taiwanese company unfamiliar with American bid protest procedures, Air Asia was unaware of our timeliness rules. However, a protester's lack of actual knowledge of our Bid Protest Regulations is not a defense to dismissal of its protest as untimely because prospective protesters are on constructive notice of our Regulations, since they are published in the Federal Register and Code of Federal Regulations. VESTLA Corp.--Recon., B-234998.3, May 1, 1989, 89-1 CPD ¶ 417.

Air Asia also argues that the case presents a significant issue and should be considered under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(b). We disagree. The significant issue exception is strictly construed and sparingly used to prevent our rules from being rendered meaningless. Generally, it is our practice to review an untimely protest under this exception only when the protest involves a matter that has not been considered on the merits in a previous decision and is of widespread importance or interest to the procurement community. Christoph's Research and Design Sys., Inc., B-232966, Dec. 12, 1988, 88-2 CPD ¶ 585. We have considered numerous protests concerning the issue Air Asia raises, the propriety of an agency's technical evaluation of an offeror's proposal. E.g., Ames-Avon Indus., B-227839.3, July 20, 1987, 87-2 CPD ¶ 71. In addition, the issue presented is not of widespread importance or interest to the procurement community. Accordingly, we will not consider the protest under the significant issue exception to our timeliness rules.

The protest is dismissed.



Robert M. Strong
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